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No. 84-1739

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

ALTAMONT FARMS, INC., *et al.*,
Petitioners,

v.

NELLY RIOS, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the Court of Appeals for the State of New York

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PETITIONERS' REPLY TO BRIEF FOR THE RESPONDENTS IN OPPOSITION

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In accordance with Rule 24(4) of the Rules of this Court, Petitioners hereby reply to the brief in opposition submitted by Respondents.

I. The New York Court of Appeals Has Seriously Misapplied This Court's Decisions Concerning the Minimum Due Process Requirements For the Assertion of *In Personam* Jurisdiction.

Worker-respondents concede that the standard to be met before a state court may exercise *in personam* jurisdiction over defendants who are not resident in that state is a strict one. That standard requires the *defendants* to have minimum contacts with the state exercising jurisdiction in order that the maintenance of the litigation does not offend " 'traditional notions of fair play and substantial justice'." *International Shoe Co. v. Wash-*

ington, 326 U.S. 310, 316 (1945). *See* Brief in Opposition, at 8.

Worker-respondents do not dispute that any attempt to "shift the focus" of the presence of minimum contacts from the defendant to the plaintiff is tantamount to allowing "plaintiff's contacts with the forum [to be] decisive in determining whether the defendant's due process rights are violated . . . [,] an approach . . . forbidden by *International Shoe* and its progeny." *Rush v. Savchuk*, 444 U.S. 320, 322 (1980).

Worker-respondents also do not dispute that the grower-petitioners in this case had *no* offices in Puerto Rico, appointed *no* agents in Puerto Rico, *never* sent a single letter to Puerto Rico, *never* placed a single telephone call to Puerto Rico, *never* traveled to Puerto Rico, *never* requested the Department of Labor of Puerto Rico to act on their behalf (even though there existed a formal procedure for doing that had the grower-petitioners chosen to use it), and had *no* control whatsoever over any of the recruitment activities that Puerto Rican officials and representatives of the U.S. Department of Labor ("DOL") *took it upon themselves* to conduct in Puerto Rico.

The sole action taken by the grower-petitioners in this case was to file job clearance orders in *Kingston, New York*—that is all. How those job orders found their way to Puerto Rico was a function of decisions made by *DOL*, not by the growers. The grower-petitioners themselves did absolutely *nothing* to "purposefully avail[] [themselves]" of the "benefits and protections" of Puerto Rico. *Kulko v. Superior Court*, 436 U.S. 84, 97-98 (1978), *reh'g denied*, 438 U.S. 908 (1979).

Worker-respondents insist that, despite the total absence of any contact between the grower-petitioners and the Puerto Rican Department of Labor, Puerto Rican officials who recruited workers acted as agents for the grower-petitioners. There exists not a particle of evi-

dence to support that assertion. Furthermore, it is belied by the growers' actual conduct—the growers *declined* to exercise procedures established by DOL whereby they could have authorized state officials to act as their agents. They did so in favor of doing their own interviewing and hiring. Moreover, the worker-respondents' contention is undermined by the decision of this Court in *Alfred L. Snapp & Sons, Inc. v. Puerto Rico, ex rel., Pedro Barez,* 458 U.S. 592 (1982), wherein this Court expressly determined that the Commonwealth of Puerto Rico participated in the job service system on behalf of, and for the benefit of, Puerto Rican *workers, not growers.*

Neither were the job clearance orders filed by the grower-petitioners in Kingston, New York "job offers" which were susceptible to unilateral acceptance by any prospective worker who might see them. Those job orders were nothing more than detailed job *notifications* which could be translated into employment relationships only upon compliance by the workers with the terms and procedures enumerated in the job orders for acceptance of the jobs. Absent some intervention in the recruitment process in Puerto Rico by the growers—which intervention no one has ever asserted took place—the job clearance orders were *not* job offers whose circulation to Puerto Rico could lawfully subject the grower-petitioners to the jurisdiction of the Puerto Rican courts. The vulnerability of the worker-respondents on this issue is highlighted most starkly by the fact that a number of the respondents are not workers at all—they are the *mothers of workers* who claimed that they experienced pain and suffering as a result of the experience of their sons in *New York* during the 1978 harvest.

The worker-respondents insist that, once the grower-petitioners learned that recruitment was occurring in Puerto Rico, they could have canceled their job clearance orders and avoided the jurisdiction of the Puerto Rican courts. Such suggestion is entirely disengenuous.

Since the grower-petitioners had done absolutely nothing to bring about DOL's recruitment in Puerto Rico (other than file job orders in Kingston, *New York*) they had no reason to believe they were subjecting themselves to Puerto Rico's jurisdiction. Moreover, the growers could not have canceled their job clearance orders exclusively with respect to Puerto Rico—they would have had to withdraw those orders from the Wagner-Peyser Act's job clearance system *generally*. To have done that a few weeks before the beginning of the harvest of their highly perishable apple crops—thereby cutting themselves off from U.S. labor and, under the H-2 program, almost certainly foreign labor as well—would have been for the growers an act of financial suicide which no employer could reasonably be expected to take. Moreover, the suggestion made by the worker-respondents is specious because by the time the growers discovered that recruitment in Puerto Rico had begun, the events on which jurisdiction of the Putrto Rican courts were based *had already occurred*. For the growers to have withdrawn their job orders then would have been completely ineffectual insofar as concerns the matters before this Court.

The statement by the worker-respondents that making them litigate in New York would render the growers "litigation proof" is untrue. Brief in Opposition, at 23. This Court in the *Snapp* case has already held that the government of Puerto Rico can initiate actions on behalf of its worker-citizens *parens patriae*. What is more, some of the worker-respondents in this case have in fact sued several of the grower-petitioners in *New York* for the same alleged activities involved in the Puerto Rican cases. *See Juan Valderrama Rios, et al. v. Marshall, et al.*, No. 79-Civ. 5711 (S.D.N.Y., filed October 22, 1979) (class action suit seeking monetary damages and injunctive relief against New York growers). Finally, DOL has an elaborate administrative complaint system which is available to workers who believe themselves to have been

aggrieved by the actions of employers such as the grower-petitioners. *See* 20 C.F.R. § Part 658 (1984). That system is supposedly designed to provide a mechanism for investigating and resolving employee complaints through administrative means.

II. Creation of *In Personam* Jurisdiction in All States to Which DOL May Send an Employer's Clearance Order Could Destroy the Wagner-Peyser Act's Interstate Clearance System.

The worker-respondents deny that the New York Court of Appeals decision is profoundly detrimental to the employment service system established by the Wagner-Peyser Act because of the "monitoring function" performed by DOL's regional offices. Such denial misses the point made by the grower-petitioners. Under the challenged decision, *all* employers who use the employment service system—whether or not they believe they may ultimately need H-2 workers—are subject to being haled into court in any state to which DOL may transmit employer job clearance orders. In a given year, particular employers may be able to identify the states in which they will be subjected to suit, under the reasoning of the New York Court of Appeals ruling. Nevertheless, knowing which states those might be does not cure the Constitutional infringement suffered by employers being subject to suit in remote states with which they have had absolutely *no direct contact*. Moreover, where job clearance orders are sent is solely within the discretion of DOL—employers using the employment service system have *nothing* to say about it. As a consequence, the New York Court of Appeals' decision—a decision of a *state* court—operates to discourage employers from using the Wagner-Peyser Act's employment service system thereby obstructing the public policy goals of Congress under the Wagner-Peyser Act and adversely affecting the interests of both employers and workers under that federally established employment program.

III. The Issue Is Dividing the Courts Which Have Considered It.

The worker-respondents assert that the issue decided by the New York Court of Appeals has been decided in the same way by every federal district court that has considered it. That is *not* true—the cases cited by the respondents are distinguishable from the instant case. In those cases, the employer took *some* affirmative action with respect to a remote state beyond the mere filing of a job clearance order with his *local* employment office. For example, in *Aguero v. Christopher*, 481 F. Supp. 1272 (S.D. Tex. 1980), the only issue involved was whether venue was proper. Moreover, the defendants in that case had engaged in telephone conversations with the Texas Employment Commission and the court held that a contract had been entered into by telephone. In *Garcia v. Vasquez*, 524 F. Supp. 40 (S.D. Tex. 1981), a farm labor contractor retained by the employer acted as agent for the employer in hiring the plaintiffs. Additionally, the employer made numerous telephone calls to Texas regarding their employment. In *Neizel v. Williams*, 543 F. Supp. 899 (M.D. Fla. 1982), the employer had specifically requested that his job clearance order be transmitted to Florida, and he had designated a Florida labor contractor by name as his preferred crewleader to conduct recruitment and hiring on the employer's behalf. Finally, in *Acker, et al. v. Hepburn Orchards, Inc.*, No. 82-715-Civ.-T-WC (M.D. Fla.) (appended to Brief for Respondents in Opposition), the employer had made numerous phone calls to farm labor contractors located in Florida.

In *none* of the referenced cases was jurisdiction of the court predicated *entirely* upon the filing by an employer in a remote state of a job clearance order with his *local* employment service office—which *are* the facts of *this* case. Moreover, those facts are undisputed. The only dispute in this case is whether the Department of Labor of Puerto Rico was the "agent" of the grower-petitioners

in recruiting Puerto Rican workers and whether the job clearance order constitutes a contractual job offer that is susceptible to unilateral acceptance by any worker anywhere who may see it. Puerto Rican officials were *not* the "agents" of the grower-petitioners and job clearance orders are *not* formal contracts. As a result, the Puerto Rican courts had no basis whatsoever for asserting *in personam* jurisdiction over the grower-petitioners.

As noted in the grower-petitioners' petition, two different state courts in Virginia and Maryland have decided precisely the same due process issue as is presented in this case in direct contradiction of the decision of the New York Court of Appeals. Additionally, there exists a welter of potential cases raising the same issue in West Virginia, Massachusetts, New Hampshire and other states. A ruling by this Court on the issue now will dispose of cases currently pending before other state courts and otherwise fully serve the interest of judicial economy.

For these reasons, and for the reasons set forth in the petition for a writ of ceriorari, grower-petitioners again pray that such writ issue to review the decision of the Court of Appeals of the State of New York.

Respectfully submitted,

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